

1 Hon. Richard A. Jones
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 BRADFORD MARSELAS JOHNSON and
13 ERIC WOODBERRY,

14 Defendants.

No. CR18-049RAJ

ORDER ON GOVERNMENT'S
MOTION IN LIMINE TO EXCLUDE
OR LIMIT CRIMINAL HISTORIES
OF CERTAIN WITNESSES

15 THIS MATTER has come before the Court upon the government's Motion
16 *in Limine* to Exclude or Limit the Criminal Histories of Certain Witnesses (Dkt #76).
17 Having considered the motion, defendant Woodberry's response, and the files and
18 pleadings herein, the Court **GRANTS IN PART** and **DENIES IN PART** the motion.

19 The government seeks to prohibit the defendants from inquiring into P.K.'s
20 conviction for Driving Under the Influence and Attempted Possession of Less than 40
21 Grams of Marijuana and A.W.'s conviction for Reckless Driving. Defendant Woodberry
22 concedes that these prior convictions should be excluded. Defendant Woodberry asks this
23 Court to deny the motion as it relates to R.M.'s two 2003 convictions for Robbery in the
First Degree.

24 ORDER ON GOVERNMENT'S MOTION IN
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WITNESSES - 1

1 The government concedes that the prior robbery felonies are presumptively
2 admissible under Fed. R. Evid. 609 as they were felonies punishable by imprisonment for
3 more than one year and defendant was released from prison just under ten years ago.
4 (Dkt. #76, p. 5). Under Fed. R. Evid. 403 the Court is permitted to exclude such evidence
5 “if its probative value is substantially outweighed by a danger of one or more of the
6 following: unfair prejudice, confusing the issues, misleading the jury, undue delay,
7 wasting time, or needlessly presenting cumulative evidence.”

8 The government wrongly concludes that the probative value of the evidence is
9 diminished because they anticipate R.W. will merely testify about matters which are
10 mostly captured on video. (Dkt. #76, p. 5). The government failed to mention that R.W.
11 is also expected to testify about what he heard the robbers say, what he observed from his
12 vantage point during the robbery, and what was done and said when the robbers and
13 employees were in the back of the store outside the area under video surveillance.
14 R.W.’s testimony may also include the clothing identification at the “show up” when the
15 suspected robbers were presented to the three witnesses to identify their clothing, an
16 event not on the video recording.

17 These events clearly place R.W.’s testimony in a light where aspects of his
18 credibility should be explored. Under these circumstances, the Court does not believe the
19 probative value of this evidence is outweighed by the limitations of Rule 403. To guard
20 against confusing the issues as expressed by the government, the government is permitted
21 to submit a proper limiting instruction to be read to the jury at the time this examination
22 occurs, whether it be elicited by the government or the defense.

23 Any examination of R.W. on the prior robbery convictions shall be limited to the
24 fact of conviction, the general nature of the crime, the date, and the punishment.

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For these reasons, the government's Motion *in Limine* to Exclude or Limit the Criminal Histories of Certain Witnesses (Dkt. #76) is **GRANTED IN PART** and **DENIED IN PART**.

DATED this 12th day of April, 2019.

Richard D. Farmer

The Honorable Richard A. Jones
United States District Judge